

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**COMPANY APPLICATION No. 39 of 2004****In****COMPANY PETITION No. 169 of 2003****For Approval and Signature:****HONOURABLE MR.JUSTICE K.A.PUJ**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

I.D.B.I. - Applicant(s)**Versus****KIRTI JAIN M.D., ESSKAY PHARMACEUTICALS & 1 -
Respondent(s)****Appearance :**

MR NAVIN K PAHWA for Applicant(s) : 1,
 MR NK MAJMUDAR for Respondent(s) : 1,
 NOTICE SERVED BY DS for Respondent(s) : 2,

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ**Date : 22/09/2005**

ORAL JUDGMENT

1. Industrial Development Bank of India, I.D.B.I., has filed this application and taken out Judge's Summons making therein following prayers :-

[A] That this Hon'ble Court be pleased to initiate action against the opponents for illegal misapplication of money of the applicant as also of M/s. Esskay Pharmaceuticals Ltd., and after holding the opponents guilty of such illegal acts, be pleased to compel the opponents to repay the amounts together with such interest as this Hon'ble Court may deem just and proper to the applicant and/or in favour of the Company, as also direct the opponents to restore properties of the applicant Company and for contribution of such sum to the assets of the Company by way of compensation in respect of misapplication / retainer, misfeasance or breach of trust as this Hon'ble Court thinks just and proper, in the interest of justice;

[B] That this Hon'ble Court be pleased to direct the Registrar of Companies to prosecute the opponents for various offences committed by the opponents in relation to the applicant as also in relation to the Company, in the interest of justice;

2.Initially, this application is filed against Mr. Kirti Jain, the Managing Director of M/s. Esskay Pharmaceuticals Ltd. After the Company went into liquidation, the Official Liquidator is also joined as party – respondent. Since certain prayers and directions are sought for against the Registrar of Companies, the same is also joined as party – respondent.

3.An affidavit is filed by Mrs. Malini Bansal in support of the Judge's Summons. Mr. N.K. Pahwa, learned advocate appearing for the applicant has submitted on the basis of the said affidavit that the applicant agreed to lend to the Company a sum of Rs. 110 Lacs by way of loan subject to the terms

and conditions of the Agreement which came to be executed on 11.09.1995. The Company obtained term loan of Rs. 110 Lacs for installation of testing and R & D Equipments under Equipment Finance Scheme which was secured on the specified machineries by way of exclusive charge by way of hypothecation. The Company reported a net loss of Rs. 560 Lacs in 1996-97 and accordingly, it made a reference to the Board for Industrial and Financial Reconstruction (BIFR) under the Provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). The Reference was registered as Case No. 156 of 1997 and the BIFR appointed the applicant as the Operating Agency under Section 16 (2) of SICA for conducting an inquiry. The applicant in turn appointed M/s. T.R. Chadha and Co., Chartered Accountants to make inquiry into the affairs of the Company and conduct a Special Investigative Audit. The said Firm had conducted audit and submitted their report dated 02.03.1998 before the BIFR. The Report found various irregularities committed by the Company and its Directors who were in charge of

the affairs of the Company. Based on the said report of the Chartered Accountant and considering all other issues, the BIFR formed its opinion that the Company was not viable and was required to be wound up. BIFR's opinion was taken up before this Court in winding up petition and during the pendency of the said petition, the applicant has filed the present application seeking to initiate action against the respondent No. 1 individually for various illegal act committed by him individually under the Provisions of Sec. 542, 543, 544 and 545 of the Companies Act, 1956. For the purpose of making out the grounds for taking actions against the respondent No. 1, Mr. Pahwa has relied on and referred to the following documents :-

[a] The Special Investigative Report prepared by M/s. T.R. Chadha & Company, Chartered Accountants.

[b] The Operating Agency Report dated 06.04.1998 made by the applicant as submitted to BIFR.

[c] Certificates dated 01.09.1995 and 05.10.1995 issued by G.P. Parvatikar & Company, Chartered Accountants together with a list of machineries installed by the Company.

[d] Letter dated 23.01.1998 issued by Bank of Baroda to the applicant.

[e] Letter dated 29.06.1999 addressed by the applicant to BIFR pointing out serious discrepancies in the accounts of the Company and for action to be initiated under Section 24 of SICA.

[f] Due Diligence Report given by the applicant to BIFR.

[g] Copy of the BIFR order dated 09.04.2003.

[h] Copy of the order dated 03.12.2003 in Company Petition No. 289 of 2003 and allied matters.

4.As far as misapplication of funds is concerned, Mr. Pahwa has submitted that respondent No. 1 Shri Kirti Jain approached the applicant for sanction of assistance of Rs. 150 Lacs in January, 1995. The applicant sanctioned assistance of Rs. 110 Lacs on 28.08.1995. While sanctioning the said assistance, the applicant specified 63 items of machinery to be acquired. A list of these equipments are given in Part A, B & D of the Appendix to Due Diligence Report which is annexed at Annexure-VI to the Affidavit. C.A. Certificates dated 01.09.1995 and 05.10.1995 issued by M/s. G.P. Parvatikar &

Company, Chartered Accountants were produced by Shri Kirti Jain confirming that the Company had installed at its premises various items as per list enclosed thereto. The Certificate produced also stated that payment of Rs. 137.38 Lacs was made to Shine Pharmaceutical & Research Laboratories [SPRL] and that the said equipments were installed prior to September 30, 1995. In the course of Due Diligence conducted by the applicant, it was found that the Company had already acquired and installed 56 items aggregating Rs. 111.18 Lacs during 1992 – 93 to 1997 – 98. Out of these, 50 items costing Rs.95.44 Lacs were acquired prior to sanction / disbursement of IDBI Term Loan. Only 6 items were actually acquired after sanction / disbursement of the loan which were only for the value of Rs. 15.74 Lacs. It was further found that 21 items of equipments were acquired from M/s. Tirupati Medical Agency at Rs. 56.23 Lacs whereas approved machinery supplier was SPRL. The list of these machinery is contained in Part-A to the Due Diligence Report. As per the report of Special

Investigative Auditor, M/s. T.R. Chadha & Company, Chartered Accountants, it was found that most of loan amount received from the applicant was utilised by the Company for the objects other than the object for which the loan amount was obtained. The details of utilisation of amount of Rs. 110 Lacs received from the applicant are given in the present application. From the said details, Mr. Pahwa has pointed out that a sum of Rs. 65.50 Lacs was paid to M/s. Tirupati Medical Agency, which is not the approved supplier towards purchase of quality control and research development equipment. Therefore, there was a large scale diversion of loan amount for the purposes other than those envisaged under the terms and conditions of sanction.

5. Mr. Pahwa has further submitted that the approved equipment supplier was M/s. Shine Pharmaceutical & Research Laboratories whereas the amount of Rs. 65.60 Lacs was paid to M/s. Tirupati Medical Agency. As per CA's Certificate submitted at the

time of disbursement, it was shown that the cheque of Rs. 137.38 Lacs was paid to M/s. Shine Pharmaceutical & Research Laboratories. However, in the course of investigation conducted by M/s. T.R. Chadha & Co., no such amount was found to have been paid to M/s. Shine Pharmaceutical & Research Laboratories. This fact itself goes to show that the respondent No. 1 made misrepresentation to the applicant while obtaining loan of Rs. 110 Lacs. He has wrongly misrepresented that he has paid huge amount to SPRL which in fact was never paid. Mr. Jain has also produced false report of the C.A. showing the payment of Rs. 137.38 Lacs in favour of SPRL. The increase in the fixed assets of the Company as per audited accounts of the Company amounted only to Rs. 16.52 Lacs and Rs. 4.52 Lacs, during 1995 – 96 and 1996 – 97 respectively. After the disbursement of the loan, the Company was supposed to have acquired additional assets worth at least Rs. 110 Lacs. This shows that the Company did not purchase required assets though huge amount of Rs. 110 Lacs were disbursed to the Company for

purchase of equipments.

6. From the above facts, Mr. Pahwa has submitted that the respondent No. 1 has not only made deliberate misrepresentation to the applicant for obtaining huge amount of Rs. 110 Lacs, but has also committed fraud with the applicant by producing false CA's Certificate of M/s. G.P. Parvatikar & Co., C.A. showing huge payments made to M/s. SPRL. The respondent No. 1 willfully and deliberately made fraudulent misrepresentation to the applicant for obtaining illegal benefits to himself. He has, therefore, submitted that the respondent No. 1 is not only liable to repay the entire amount of Rs. 110 Lacs together with interest and costs but he is also liable to be prosecuted for various offences committed in relation to the applicant. He is guilty of committing misfeasance and breach of trust in relation to the Company and the applicant. He being the Managing Director of the Company has to act in a fiduciary capacity in relation to the affairs of the Company. He has committed criminal

breach of trust and misfeasance in relation to the Company and applicant and is also guilty of misfeasance in relation to the money and properties of the Company.

7.Mr. Pahwa has further submitted that out of Rs. 110 Lacs disbursed by the applicant, the assets worth Rs. 16.52 Lacs and Rs. 4.52 Lacs were acquired by the Company during the year 1995 – 96 and 1996 – 97 respectively. This would show that the major portion of the loan amount was siphoned off by the respondent No. 1 and by such illegal act has also duped the applicant. He is, therefore, guilty of criminal breach of trust, cheating and various other criminal offences, both in relation to the Company as also in relation to the applicant.

8.As far as acts of misfeasance are concerned, Mr. Pahwa has submitted that in the course of conducting special investigative audit, the Auditors have found that the Company acquired equity shares of 8 Companies for consideration of

Rs. 26.68 Lacs from ERL, a sister concern in lieu of outstanding dues. It was not open for the respondent to purchase shares of ERL, which were of no worth for supporting a consideration of Rs. 26.68 Lacs. The respondents by doing so, have completely acted contrary to law and against the interest of the Company and its Shareholders. By doing so, the respondent has caused loss to the Company to the extent of Rs. 26.68 Lacs. The Auditors have also found that the respondent made payment of Rs. 1.61 Lacs interest to ERL when the said amount was actually receivable from ERL, resulting in a loss of Rs. 3.22 Lacs. The Auditors also found that the respondent has paid rent for corporate office of ERL at Rs. 10,000/- p.m. to HUF of Shri Kirti Jain, the respondent. The respondent is, therefore, guilty of committing criminal breach of trust besides cheating the Company, its shareholders and Creditors. The respondents have acted completely contrary to the accounting principles and standards by writing off Rs. 314 Lacs as extraordinary expenses representing bad

debts (Rs. 216 Lacs), Deferred Expenses (Rs. 61 Lacs), Income Tax and Sales Tax Expenses (Rs. 37 Lacs) besides making prior adjustments of Rs. 109 Lacs.

9. Mr. Pahwa has further submitted that in the course of investigation, it has been found out by the Auditors that the respondent No. 1 who was always acting as if the Company were his proprietorship concern was guilty of writing off huge amounts due from its Debtors. He has pointed out a list showing debtors whose debts came to be written off by the respondent amounting to the tune Rs. 2,16,25,175/-. A perusal of the said list goes to show that about Rs. 216 Lacs of amounts was declared as bad debt and written off. Most of these amounts were written off despite the fact that the said amounts were due and payable to the Company and in most of the cases, the said amounts were also confirmed by the respective debtors. The amount could have been recovered from the concerned parties. The Auditors have found that the Company

did not have any justification supported with material to write off huge amount of Rs. 216 Lacs. The action of the respondent was completely prejudicial to the interest of the Company, its Shareholders and Creditors. The action has resulted in huge loss to the Company for which the respondent was solely accountable and responsible. On the one hand, the Company was recklessly writing off debts running into Crores of Rupees and on the other hand, the Company did not have sufficient funds even to execute its export orders. There was a sharp decline of about 82% in the total sales of the Company from 699.15 Lacs for the financial year 1995-96 to Rs. 124.65 Lacs in the Financial Year 1996-97. The non-execution of export orders in hand, therefore, not only resulted in great loss of turnover but it also resulted in loss of profits, financial strength and capability to service its debts.

10.Mr. Pahwa has further submitted that the respondent had sold of advance licenses amounting

to Rs. 74.64 Lacs and the amounts were written off during the year 1996-97. All the copies of the Debit Notes were lying in the file of the Company and these Debit Notes were signed only by the person who had prepared these Debit Notes. These Debit Notes were approved by the approving Authority. There was no justification for treating the sale of Advance licenses without the confirmation of the party and without completing the necessary formalities. This action by the respondent No. 1 amounts to a gross act of dereliction of duty against the interest of the Company and causing loss to the Company. The respondent is, therefore, liable and accountable for such illegal acts.

11.The Auditors have found so many other irregularities and illegalities. The Auditors have found that large amount of raw materials were transferred from/to ERL and entries in pencil were made in bin cards in pencil and that too at a later date. No explanation has come forth for such

transfer more particular in view of the fact that there was no production activity in ERL. The Auditors have also found that in certain cases, the raw material was purchased from ERL at a price at which ERL had purchased those materials even when the raw material prices were less in the open market as per the rates quoted in chemicals weekly. The Auditors have also found that in certain cases, issues were made when there was no stock in the books. It was further observed that the issues were made out of stock of SRL and the entries in the bin cards for receipt of stock were made only at a later date. All these acts go to show that the respondent was not maintaining proper records so as to have scope for manipulation in the accounts at an appropriate stage and time. Pencil entries were made so as to give room for manipulations. The incidents also go to show that large number of transactions were entered with ERL even though ERL did not have any productions. This go to show that the respondent has siphoned off all this raw material by first diverting the same to

ERL.

12.Mr. Pahwa has further submitted that the Auditors have also found various other illegalities while maintaining the Books of account and other records of the Company. The Auditors have made reference to some of the alleged illegalities found in the books of accounts maintained by the respondents. Such illegalities are in the form of the balances were negative, GRNs have been over written and dates and numbers have been changed in majority of cases, Delivery challans have been changed in respect of date delivery, in the Delivery Challans, the name has been changed from ERL to EPL, Bin Cards had cancellations in almost all cases, the date on material requisitions and issue dates on the bin cards did not tally in many cases.

13.Mr. Pahwa has further submitted that the Auditors have found that Company had given advance of Rs. 13.66 Lacs to Gem Jewellery and Plastchem Pvt. Ltd. and Rs. 37.79 Lacs to M/s. Polyset Products Pvt.

Ltd. while deciding to diversify and venture into flori-culture project. The amounts were given when the Company otherwise was facing severe financial crisis. In fact, substantial part of these amounts was paid out of the amounts obtained from the applicant. The Company had borrowed Rs. 110 Lacs from the applicant for purchase of equipments for its main business. However, instead of doing so, the respondent misutilised the funds while committing fraud and criminal breach of trust for the purpose of siphoning off the funds while showing advances. The respondent No. 1 has siphoned off these and other funds by creating noval ideas of starting a new venture. The main business itself needed a push. The export-orders in hand were not being executed for lack of funds whereas new venture were started. This by itself demonstrates that the sole intention behind new ventures was to direct/siphon off funds from the business channel to themselves. Mr. Pahwa has further submitted that the respondent No. 1 has not taken any legal action against its Sundry debtors

for recovery even though the amounts were due for more than years. Huge amount of debts were due to the Company. As on 31.03.1997, Rs. 151.77 Lacs were due which included Rs. 77.50 Lacs from ERL. Despite this fact, no legal action was taken by the respondent to recover the said amounts.

14. On the basis of the above irregularities and illegalities and criminal breach of trust and misappropriate and misapplication of funds, Mr. Pahwa has submitted that the respondent No. 1 is guilty of series of acts which on the face of it were against the interest of Company, its Shareholders and Creditors. The prayers made in this application are, therefore, required to be granted in the interest of justice.

15. The respondent No. 1 has filed his reply on 23.02.2005. Mr. N.K. Majmudar, learned advocate appearing for the respondent No. 1 has submitted on the basis of the reply that only with a view to meet with the various allegations and averments

made in the present application, the respondent No. 1 has asked for the inspection of the documents which are in possession of the Official Liquidator and unless and until the inspection is given to the respondent No. 1, proper reply could not be filed in the matter. Even after giving inspection, necessary zerox copy of the documents are required to be given to the respondent No. 1 and then only proper and effective reply can be filed. All the statements, allegations and contentions raised in the application are far from truth. The applicant has not moved this application with a genuine or bonafide intention. It seems to have been filed with ulterior motive. Mr. Majmudar has further submitted that the present applicant did prefer applications of similar nature complaining the acts, deeds and misdeeds pertaining to misfeasance and malfeasance during the proceedings pending before BIFR, wherein necessary documents along with the reply came to be submitted by the respondent No. 1 and ultimately the proceedings were not travelled to the advance stage and after

considering the said reply, BIFR had dropped the proceedings or did not pass any order which would make one thing crystal clear that even the Competent statutory forum under the BIFR did not find indulgence into misfeasance and malfeasance for the respondent No. 1. Mr. Majmudar has further submitted that simply because the respondent No. 1 was the Director of the Company in liquidation, he was not responsible for various illegal acts / deeds which amounted to alleged misapplication of money and property of the Company and/or retention of money of property of the Company. The respondent No. 1 was not liable and responsible for retention of money and property or that he was not guilty of misfeasance and breach of trust in relation to the Company. The respondent No. 1 was not guilty of various criminal offences and he was not liable to be prosecuted. Without there being any act or omission affecting the business transactions of the Company, even no documents or other proof in the nature of evidence seems to have been annexed along with the affidavit in support of

the Judge's Summons and without there being any basis and without there being any supporting corroborative, even prima facie proof or evidence, straightway reckless allegations have been made against the respondent No. 1.

16.Mr. Majmudar has further submitted that even before the BIFR during the course of proceedings, similar kind of allegations were levelled against the respondent No. 1 and when the present applicant remained unsuccessful in achieving its goal, at that time, it is not open for the present applicant to move this application before this Court. The present application is nothing but absolutely a futile effort on the part of the applicant to initiate second round of proceedings, despite on previous occasions, the applicant's efforts were proved in futility.

17.Mr. Majmudar has further submitted that even if ground A regarding alleged misapplication of funds is perused, by no stretch of imagination, it could

be said that there was any misapplication of funds. If the entire ground A is perused, it would make it clear that 50 items aggregating to an amount of Rs.111.18 Lacs were purchased, out of which as per the allegation, 50 items valued at Rs. 95.44 Lacs were acquired prior to disbursement of term loan by the applicant. How and in what manner this act could cause prejudice to the business affair of the Company is not disclosed. It is a glaring fact that 56 items were purchased even as per the allegation, before the Term Loan came to be sanctioned and disbursed and, therefore, it would give rise to a presumption that liability of the Company to make payment towards aforesaid purchase did arise. However, instead of effecting purchase after term loan was disbursed, if the purchase was made before the Term Loan was disbursed, it would not make any difference and by no stretch of imagination, it could be said that it had affected prejudicially to the affairs of the Company. On the contrary, once purchase is being accepted, whether it is before or after the disbursement of

the Term Loan, would not make any difference and this will not assume any significance, especially when the amount of Term Loan sanctioned and disbursed was really spent towards clearance of liability of 56 items. Thus, merely some of the items were purchased and payment was made after the Term Loan was sanctioned would not make any difference and admittedly, it could not be said to be an act amounting to misfeasance or malfeasance. On the contrary, it was in the best interest of the Company that well in advance, the items were purchased as the same were required due to emergency and some time was likely to be consumed in getting the Term Loan sanctioned. Mr. Majmudar has further submitted that an amount of Rs. 65.50 Lacs was paid to M/s. Tirupati Medical Agency towards purchase of quality control and research development equipments, as the equipments came to be purchased from M/s. Tirupati Medical Agency. Thus, it is not the case of the applicant that without purchase of the equipments, the amount was misapplied. At the best, it can be said that

initially, the Company had given the name of supplier as M/s. Shine Pharmaceuticals and Research Laboratories. However, thereafter the equipments came to be purchased from M/s. Tirpuati Medical Agency.

18. So far as allegations in respect of act of misfeasance contained in Ground B are concerned, Mr. Majmudar has submitted that the Company did acquire equity shares of 8 Companies. The Company had to recover an amount of Rs. 26.68 Lacs from Esskay Remedies Limited and the said Company was not in a position to make the payment in cash. Thus, in order to safeguard the interest of the Company, instead of loosing everything, equity shares were purchased even below the market rate, to adjust the recovery of outstanding dues, which the Company were to recover. Even documents reflecting this fact are lying in the record room of the Company and are thus available with the Official Liquidator. The respondents have acted in the best interest of the Company and there is no

substance in the allegation with regard to acts of misfeasance or malfeasance.

19. With regard to payment of rent to corporate office is concerned, Mr. Majmudar has submitted that HUF is a different legal entity and if any amount is to be paid towards rent, then without considering the respondent No.1's existence as a member of the HUF, the same is required to be discharged as HUF being a legal different entity and if the rent is being paid to HUF, it could not be said to be an act of illegality or irregularity.

20. So far as Ground C with regard to alleged bad debts and expenses written off are concerned, Mr. Majmudar has submitted that the Company has passed necessary Resolutions from time to time and/or taken decisions by the Board for taking effective steps for recoveries. Merely some amounts were shown as bad debt due to circumstances beyond the Company's control while effecting the recoveries, no allegations could have been made on this count.

21. So far as Ground D is concerned, against the purchase of raw-materials, after production of final product, as per various orders received by the Company, from time to time, the export of the final products was done by the Company and against the export orders, ultimately as per the Rules and Regulations and Export Policy, the Company was granted Advance Licences i.e. Licence for procurement of the raw-materials for export without payment of duty. Thus, Company had imported raw materials for utilising the same in the production of final export products. On some occasion, instead of actually purchasing the material from abroad, to meet with the emergency needs and exigencies, when the raw material is being purchased from the local market and thereafter final product is being exported, then the licence value to the extent for which the raw material is already purchased from the local market can be sold as the same would carry value and, therefore, against the outstanding liability of the Company

towards its some of the Creditors, the said licences were handed over in lieu of cash payment. He has, therefore, submitted that the Company thought it fit to preserve the liquidity/liquid cash of the Company and, therefore, the said decision was taken for the best interest of the affairs of the Company.

22. With regard to ground E(v), Mr. Majmudar has submitted that it prima facie appeared to the Company that the said project was found to be attractive and hence, the Company had decided to invest some amount towards the said project. The respondent No. 1 had no connection with the said Company nor he had any personal interest and merely because some project did not come up as per the expectation, it cannot be termed as an act of illegality or irregularity giving rise to misfeasance or malfeasance.

23. Based on the aforesaid explanations furnished before this Court and even earlier before BIFR, Mr.

Majmudar has submitted that the present proceedings initiated by the applicant are not genuine and bonafide and, therefore, the present application deserves to be rejected at the very threshold.

24. Since the respondent No. 1 has requested this Court to pass an order with regard to inspection of the records and documents, necessary orders were passed by the Court and Official Liquidator has also filed his report to this effect on 21.03.2005 wherein he has submitted that he has deputed his representative to the site of the Company for the purpose of providing inspection of the Books of Accounts to the applicant on 27.01.2005, 05.02.2005 and 15.02.2005 respectively and also deputed his representative on earlier occasion on 11.10.2004 pursuant to the order passed by this Court on 27.09.2004 in C.A. No. 325 of 2004. The applicant did not turn up on the site and the representative of the Official Liquidator was virtually waiting for whole day on the aforesaid occasions. In subsequent visits, the applicant has either come

late on the site and in other visit, due to non-availability of the keys of the concerned Record Room. Despite this, the inspection of the Books of Accounts was provided as far as possible. The way in which the applicant was asking for inspection and extension, it appeared to that he was buying out the time for some ulterior purpose and was not interested in co-operating the Official Liquidator in carrying out the directions of this Court.

25. After having heard learned advocates appearing for the respective parties and the Official Liquidator and after having gone through the averments made in the affidavit filed in support of Judge's Summons as well as the affidavit-in-reply filed by the respondent No. 1 and the documents attached therewith, the Court is of the view that the applicant has made out a prima facie case to initiate actions against the Ex-Directors including the respondent No. 1 of the Company in liquidation. After thorough and detailed inquiry and investigation, the present applicant has

established prima facie case to show that certain illegalities and irregularities were committed and the funds of the Company have either been misapplied or siphoned off. Simply because initially the actions were not taken by BIFR when the proceedings were pending, it cannot be said that there is no substance in the finding arrived at by the concerned Chartered Accountant. Even the BIFR in its order dated 09.04.2003 has observed that since the winding up of the Company had been recommended by the Bench, the application submitted by IDBI and BOB u/S. 24 of SICA for taking misfeasance/malfeasance proceedings against the Company's Directors/Manager was not taken at that stage. The applicant was however, permitted to approach the Company Law Board or other appropriate forum in this regard. The explanations tendered by the respondent No. 1 do not seem to be convincing so as to inspire the confidence of the Court of not taking any action against the respondent. As a matter of fact, while passing an order of even date in Company Application No. 306 of 2004, the Court

has already directed the Official Liquidator to refer the matter to the Chartered Accountant and obtain his report on the basis of which the misfeasance proceeding under Section 543 (1) of the Companies Act, 1956 can be initiated against the Ex-Directors of the Company. Here in the present case, specific instances have been pointed out on the basis of the report submitted by the Chartered Accountant. This is a good ground for initiating immediate actions against the Ex-Directors of the Company in liquidation. The Official Liquidator is, therefore, directed to take help of these papers and documents which are submitted along with the present application while referring the matter to the Chartered Accountant and after obtaining the report from the Chartered Accountant very promptly, actions must be initiated forthwith. Even for the purpose of moving an application before this Court, the materials which are already placed on the file of this Company Application are adequate. These materials are, however, confining to the loan sanctioned by the present applicant in favour of

the Company in liquidation. There are other instances also which might not form part of the inquiry and investigation earlier made. The Official Liquidator is, therefore, directed to refer the matter to the Chartered Accountant as directed in Company Application No. 306 of 2004 and obtain an exhaustive report covering all the aspects of the matter and thereafter file appropriate application before this Court under Section 543 (1) for the purpose of initiation of misfeasance proceedings against concerned Directors, Promoters and/or Officers of the Company.

26. So far as directions to the Registrar of Companies for initiating actions for various offences committed by the Company and its Directors under the Companies Act, 1956 are concerned, the Court is of the view that no formal permission or direction is required in the matter. The Registrar of Companies is always empowered to initiate necessary proceedings or file complaints for commission of

offences under the Companies Act, 1956 by the Company and its Directors of the Company. He is, therefore, directed to take into consideration the various submissions made in the present application and take appropriate actions looking to the facts and circumstances of the case and the materials available on his record.

27. Subject to the aforesaid directions and observations, this application is accordingly disposed of.

[K.A. PUJ, J.]

Savariya